IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.827 of 1997

R. Selvaraj ... Appellant /
Accused

-Vs-

State by
Inspector of Police,
Vigilance and Anti
Corruption, Chennai. ... Respondent.

Criminal Appeal against the judgment dated 23.10.1997 made in
C.C. No.43 of 1996 on the file of VI Additional Sessions and Special Judge,
City Civil Court, Chennai.

!For appellant : Mr. B.Sriramulyu,
Senior Advocate,
for M/s.N.A.Ravindran and
V.Murugesan.

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

The Accused in C.C.No.43 of 1996 on the file of learned VI
Additional Sessions and Special Judge, Chennai is the Appellant. By the
Judgment dated 23.10.1997, the Trial Court convicted the Appellant / Accused
under Sec.7 and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act.

2. Gist of the charge framed against the Accused and finding
/ sentence of the trial Court is as noted below:-

Charge Number Gist of the Charge

Finding / sentence

1 Under Sec. 7 of Prevention of Corruption Act for demanding and accepting
gratification from P.W.2 - Chennakesavan. Convicted and sentenced to undergo

Rigorous Imprisonment for six months and fine of Rs.500/-, in default one month Rigorous Imprisonment. 2 Under Sec. 13(2) r/w 13(1)(d) of Prevention of Corruption Act for abusing his official position as public servant. Convicted and sentenced to under go Rigorous Imprisonment of one year and fine of Rs.500/-, in default one month Rigorous Imprisonment.

3. We may firstly state the admitted facts which led to the laying of trap:- The Accused Selvaraj worked as Junior Engineer, Grade I, Tamil Nadu Electricity Board, Perambur West, Madras from 23.01.1995. P.W.2 - Chennakesavan is the reside e Colony, Sembium. In or about 17.11.1994, P.W.2 presented an application with necessary certificates before the Assistant Executive Engineer, Tamil Nadu Electricity Board for converting the service connection to his house from Single Phase to Three Phase and that the same was registered and forwarded to Junior Engineer, Perambur on 19.11.1994 for further necessary action.

4. P.W.5 (Thiagarajan) - Commercial Inspector of Tamil Nadu Electricity Board inspected the premises of P.W.2 and prepared an estimate which was approved by the Junior Engineer, Perambur West on 13.12.1994 . As per the estimate, P.W.2 had remitted the sum of Rs.3,365/- on 1 7.12.1994 under Ex.P.3 - Slip. Name of P.W.2 was entered in the Priority Register.

5. P.W.2 meeting the Accused. In connection with his application, P.W.2 met the Accused on 03.02.1995 and requested him for early action on his application. The Accused had demanded a sum of Rs.200/- as gratification other than legal remuneration for himself and stated that the amount should be paid to him on 04.02.1995 at about 3.00 p.m. at his office. On 08.02.1995, P.W.2 again met the Accused at his office and explained his inability to meet him on 04.02.1995. The Accused reiterated his demand for Rs.200/- and directed to meet him on 10.02.1995 at or about 10.00 a.m. at his office and pay the bribe amount.

6. Complaint and Registration of F.I.R. On 09.02.1995 - 4.00 p.m., P.W.2 - Chennakesavan went to Vigilance and Anti Corruption Office, Chennai and gave a complaint to P.W.10 - Deputy Superintendent of Police, which was forwarded to P.W.11 - Inspector of Police. On the basis of the complaint, a case was registered in Crime No. RC2/AC/95/MC1 under Ss.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act under Ex.P.13 - First Information Report.

7. Happenings in the Office of V & A.C. On 10.02.1995, P.W.2 went to the Office of Vigilance and Anti Corruption. P.W.11 - Inspector of Police called for Official Witnesses - P.W.3 (Assistant Director, Agricultural Department) and one Kannan, Personal Assistant to Deputy Commissioner, Civil Supplies, North to be witnesses for the Trap. P. W.11 introduced the Official Witnesses to P.W.2 and vice versa. Sodium Carbonate solution was prepared and P.W.11 demonstrated the consequence of Phenolphthalein test to P.W.2 and Official Witnesses. Complainant / P.W.2 produced Rs.200/- (M.Os.1 to 4 - Rs.50 X 4) as the bribe amount. After demonstration, the currency notes were smeared with Phenolphthalein Powder and returned to P.W.2 - Chennakesavan with instruction to pay to the Accused only after demanded.

P.W.3 (Natarajan) - Assistant Director, Agricultural Department was asked to accompany P.W.2. P.W.11 directed P.W.2 that if the tainted money was accepted by the Accused, he was asked to give signal by tying his Watch from his left hand to right hand.

8. Happenings in the Office of Accused. At 11.00 a.m., P.W.2 accompanied by P.W.3 went to the Office of the Accused. The Police Party maintained a distance of 30 feet. The Accused was not there. So, P.Ws.2 and 3 waited for some time. After the Accused came, P.W.2 introduced P.W.3 as his friend and informed him that P.W.3 was also in need of Three Phase Service Connection. The Accused stated that it could be looked later and asked P.W.2 whether he brought the amount. On demand, P.W.2 gave M.Os.1 to 4 - currency notes (Rs.50 X 4). The Accused received them with his right hand and after counting, he kept them in his left shirt pocket. P.W.2 told the Accused that he had already paid the estimate amount. The Accused instructed him to get the cable wire. On being asked, the Accused told P.W.2 that cable wire is available in Waltax Road, Madras.

9. P.W.2 came out and had shown the prearranged signal. On receiving the signal, P.W.11 and his party entered into the office of the Accused. P.W.2 was asked to wait outside. P.W.3 identified the Accused. Sodium Carbonate solution was prepared. When the Accused dipped his right hand fingers into the solution, it turned pink. But the solution of the left hand fingers had not turned pink. On being questioned, Accused produced currency notes - M.Os.1 to 4 from his shirt pocket. The shirt pocket (M.O.5) when dipped in the solution also turned pink.

10. M.Os.1 to 4 - currency notes and M.O.5 - shirt were seized. Sodium Carbonate solution was kept in bottles and sealed as S.2, S.3 and S.4 (M.Os.6 to 8) and they were also seized. The Accused was arrested by 12.40 p.m.

11. Further investigation. P.W.11 recovered the Estimate File - Ex.P.9. Regarding the office of the Accused, Ex.P.14 - Rough Plan was prepared, in which P.W.11 and witnesses signed. At about 2.00 p.m., the house of the Accused was searched and cash of Rs.80,450/- and other articles / files (as indicated in Ex.P.8 Mahazar) were seized.

12. Seized material objects were sent for chemical analysis. During the analysis, Sodium Carbonate and Phenolphthalein were detected in all the items - S.2, S.3 and S.4.

13. Laying of Charge Sheet. As per the direction of the Superintendent of Police, P.W.11 had taken up further investigation. He had examined the witnesses. For prosecuting the Accused, Ex.P.1 - Sanction Order was obtained from the Superintending Engineer, MEDC/North. On completion of investigation, Charge Sheet was filed against the Accused for the offences under Ss.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

14. To substantiate the charges against the Accused, in the Trial Court P.Ws.1 to 11 were examined. Exs.P.1 to P.14 were marked. M.Os.1

to 8 were produced. The Accused was questioned about the incriminating circumstance and evidence under Sec.313 Crl.P.C. The Accused stated that he has joined as Grade I Junior Engineer only ten days ago i.e., on 23.01.1995. On 03.02.1995, he directed P.W.2 to get the cable wire. On 10.02.1995 also he only asked P.W.2 to get the cable wire. But P.W.2 had thrust the cost of the cable wire in his hands and that there was no demand of bribe by him.

15. Upon consideration of the evidence, learned Sessions Judge found that the demand of illegal bribe amount is proved by the evidence of P.W.2. Acceptance of illegal bribe amount is proved by the seizure of M.Os.1 to 4 and detection of Phenolphthalein and Sodium Carbonate during chemical analysis. The Trial Court rejected the defence version of improbability of demanding any bribe amount within few days of being promoted to Grade I Junior Engineer. On the above findings, the learned Sessions Judge convicted the Appellant / Accused and sentenced him to undergo Rigorous Imprisonment and also imposed fine as aforesaid.

16. Aggrieved over the conviction, the Appellant / Accused has preferred this appeal. Assailing the findings of the Trial Court, the learned Senior Counsel Mr.B.Sriramulu interalia contended that the Appellant / Accused, who was promoted to Junior Engineer Grade I cadre is made victim of the Trap. It is contended that money was thrust into the hands of the Appellant / Accused by P.W.2 to buy the cable wire, which was not properly taken note of by the Trial Court. Contending that the trap witness is highly interested witness and that his evidence does not inspire the confidence of the Court on vital aspects, it is submitted that the Trial Court erred in basing the conviction upon the uncorroborated version of P.W.2. On the defence version it is submitted that by preponderance of probability, the defence has sufficiently proved its version and the Appellant / Accused prays for benefit of doubt.

17. Reiterating the findings of the Trial Court and countering the arguments of the Appellant / Accused, the learned Government Advocate submitted that it is highly improbable that P.W.2 would have thrust the money into the hands of the Appellant / Accused for purchase of cable wire. Attacking the defence on the ground of improbabilities, learned Government Advocate further submitted that if really P.W.2 had given the cost of cable wire, he would have given actual cost and would not have paid lump sum amount of Rs.200/-. Laying emphasis upon the evidence of P.Ws.2 and 3 and the Chemical Analysis Report - Ex. P.12 and other evidence, the learned Government Advocate submitted that the reasonings for conviction are well balanced warranting no interference.

18. Upon careful reassessment of the evidence, Judgment of the Trial Court, other materials on record and submission of both sides, the following points arise for consideration in this appeal:-

(i) Whether the defence version that amount of Rs.200/- was paid towards cable wire cost is probable and acceptable?

(ii) Whether the Trial Court was right in finding the Appellant /

Accused guilty under Ss.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and whether the conviction and sentence of imprisonment warrant any interference ? 19. P.W.2 - Trap Witness: Case of prosecution revolves around the trap witness - P.W.2 (Seenakesavan). It is well settled that the evidence of trap witness must be tested in the same way as that of any other interested witness. The Court has to look for independent corroboration before convicting the Accused person. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the Court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon it or not in those given circumstances. Therefore, as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In the light of facts and circumstances of this case, whether the evidence of P.W.2 on payment of bribe amount by the Appellant / Accused could be accepted is the short point to be considered.

20. For changing the service connection from Single Phase to three phase, P.W.2 - Chennakesavan gave application on 17.11.1994. He remitted Rs.20/- as registration fee under bill receipt - Ex.P.2. P.W.5 - Commercial Inspector visited the house of P.W.2 and estimated the cost at Rs.3,365/-. P.W.2 had paid the estimate cost on 17.12.1994 under Ex.P.4 - Cash Receipt. On 03.02.1995, P.W.2 went to Junior Engineer office and met the Appellant / Accused expressing his grievances. The Appellant / Accused demanded Rs.200/- as bribe amount promising to give Three Phase connection to the house of P.W.2 at the earliest. On 08.02.1995, when P.W.2 met the Appellant / Accused, he again demanded the bribe amount to be brought on 10.02.1995. P.W.2 has clearly spoken about the demand of illegal bribe amount by the Appellant / Accused.

21. Change of Three Phase meter was delayed because of nonavailability of the meters. In his Cross-examination, P.W.2 has admitted that P.W.5 - Commercial Inspector told him that conversion of Three Phase connection is delayed because of non-availability of the meter. In his evidence, P.W.5 has also stated brd;d nfrtd; nghl;lnghJ kPl; lh; myhl;bkz;l; Mdt[ld; fbdf;c&d; bfhLj;J tpLtjhfr; brhd;ndd;. From the Cross-examination of P.W.7 - Assistant Executive Engineer also it is elicited that change of Three Phase connection was delayed due to non-allotment of meter. In his Cross-examination, P.W.7 has stated...

" 10/02/95 tiu kPl;lh; !;lhf; ,y;iybad;gjhy; kpd; ,izg;g[bfhLf; ftpy;iy/ 16/02/95y; kPl;lh; myhl;bkz;l; te;jJ/ 17/02/95y; fbdf;c&d; bfhLf;fg;gl;lJ/ kPl;lh; fpilf;fhjjhy; jhd; fhyjhkjk; MdJ ...".

22. Pointing out the reason for delay in the change of Three Phase connection due to non-availability of meter, it is contended by the learned Senior Counsel for the Appellant / Accused that when meters were not available, the Appellant / Accused would not have promised to provide Three Phase connection to P.W.2 and the payment of bribe amount is highly

improbable. It is further contended that payment of illegal bribe amount is highly improbable when the Appellant / Accused was promoted to the cadre of Grade I Junior Engineer, who joined service only on 23.01.1995, few days prior to the occurrence.

23. The above contentions urged by the Appellant / Accused do not merit acceptance. Though the Appellant / Accused had joined in the cadre of Grade I Junior Engineer on 23.01.1995, he was not a new entrant to the service, but a promotee. He was already working in Tamil Nadu Electricity Board as a Diploma Holder. He was selected by internal selection and temporarily promoted as Grade I Junior Engineer. It is not as if the Appellant / Accused was naive to the procedure of the Department by being a new entrant. He was already employed, having knowledge of the procedures adopted. The contention that the Appellant / Accused being a new entrant to the cadre and improbability of his demand has no force.

24. Likewise, the improbability of the demand of bribe amount by the Appellant / Accused on the ground of non-availability of Meter lacks in substance. From the answers elicited from P.W.7 extracted above in para No.20, it is seen that the meter allotment was received on 16.02.1995. So, the Appellant / Accused who was then working as Junior Engineer Grade I must have been aware that the Meter would be allotted shortly and that the grievance of P.W.2 could be redressed by changing Single Phase to Three Phase.
25. P.W.2 was highly interested in changing Single Phase connection to Three Phase connection. While being so, there is every possibility of his meeting Appellant / Accused for changing the connection. The gravamen of the Charge that there was payment of bribe amount is well proved by the evidence of P.W.2.

26. Acceptance of bribe amount is proved by the evidence of P.W.2 and the official witness - P.W.3, who accompanied P.W.2. Recovery of tainted money from the person of the Appellant / Accused is well proved by the evidence of P.Ws.3 and 11 and Ex.P.6 - Mahazar and other contemporaneous documents. During the chemical analysis, Phenolphthalein and Sodium Carbonate were detected in the solution. Recovery of the amount coupled with evidence of P.W.2 is a formidable incriminating evidence against the Appellant / Accused.

27. Contention of the Appellant / Accused is that he is falsely implicated in the trap case and that money was thrust upon his hands by P.W.2 for purchase of cable wire. P.W.2 is a stranger to the Appellant / Accused. He was only insisting for Three Phase connection. The Appellant / Accused being a stranger to P.W.2, the question arises why should P.W.2 falsely involve him (Accused) by making such grave allegation. The Trial Court rightly posed this question in accepting the evidence of P.W.2 as reliable.

28. It is proved from the evidence of P.Ws.2 and 3 that the Appellant / Accused had received Rs.200/- (M.Os.1 to 4) from P.W.2. It is not the case of the Appellant / Accused that the amount was paid to him as remuneration or other money due to be paid to the Department. Consequently, a

presumption under Sec.20 of Prevention of Corruption Act, 49/1988 undoubtedly arises against the Appellant / Accused and that presumption is that unless he proves the contrary, it must be treated that he has received the money as having accepted the money as the motive or reward.

29. It is the definite case of the prosecution that the Appellant / Accused received Rs.200/- as illegal bribe amount. But the explanation offered by the Appellant / Accused is that Rs.200/- was paid by P.W.2 towards purchase of cable wire for changing the Single Phase connection to Three Phase connection. Purchase of cable wire is not the work of Department. It is not elicited from P.W.5 or P.W.7 that laying of cable wire is the work of Department or that the Department had to purchase the cable wire by the amount paid by the Consumer and lay the same. While so, the contention of the Appellant / Accused that P.W.2 thrust Rs.200/- asking him to purchase the cable wire appears artificial.

30. When laying of cable wire is not the work of Department, amount of Rs.200/- is not due to the Department by remuneration nor payable to the Appellant / Accused as legal remuneration. P.W.2 and the Appellant / Accused being strangers, P.W.2 would not have thrust upon the money in the hands of the Appellant / Accused for purchase of cable wire. Even if so paid, as rightly contended by the learned Government Advocate that P.W.2 would have paid only the actual cost of cable wire and would not have paid the lump sum amount of Rs.200/-. Payment of lump sum of Rs.200/- also discredits the defence version.

31. The learned Senior Counsel relied upon the case of State of Tamil Nadu v. S.krishnamurthy (2002 (6) Supreme 490) where the Supreme Court declined to interfere with the order of acquittal by the High Court. In the said case, defence was set forth that Rs.300/- was not received as bribe amount but has received as Flag Day Fund and Teachers' Fund, which was proved to be authorised practice. In the above decision, the practice of collecting Flag Day Fund and Teachers' Day Fund was established. As discussed earlier, in the case in hand, laying of cable wire is not the work of Tamil Nadu Electricity Board nor any such practice is established. While so, the above decision cannot be applied to the case in hand. Explanation by the Appellant / Accused that Rs.200/- was thrust upon him for laying the cable wire does not pass the test of preponderance of probability.

32. In the instant case, the prosecution has placed sufficient materials proving that the Appellant / Accused demanded money from P.W.2 / Complainant and that the trap was laid and Investigating Officer was successful in establishing that the Appellant / Accused had demanded and accepted the bribe amount for changing of Single Phase connection to Three Phase connection. Therefore, the Trial Court has rightly held that the prosecution has proved beyond all reasonable doubt that the Appellant / Accused was guilty of the offence. 33. Having gone through the Judgment and careful assessment of the evidence of P.Ws.2, 3 and 11 and other relevant materials, this Court finds it difficult to come to a different conclusion. The finding of guilt and conviction ought to be maintained. The Trial Court has shown extreme leniency in imposing sentence of one year

Rigorous Imprisonment for the conviction under Ss.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and the sentence of imprisonment and fine are to be maintained.

34. Therefore, the Judgment of learned VI Additional Sessions and Special Judge, Madras in C.C.No.43 of 1996 (dated 23.10.1997) convicting the Appellant / Accused under Ss.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and the sentence of imprisonment and the quantum of fine are confirmed and this appeal is dismissed. The Trial Court is directed to take immediate steps for securing the Accused to commit him to prison for serving the remaining period of sentence.

sbi
Index:Yes
Internet:Yes

To
1. The VI Additional Sessions Judge, City Civil Court,
Chennai.

2. The Principal Sessions Judge, City Civil Court, Chennai.

3. The Inspector of Police, Vigilance and Anti Corruption, Chennai.

4. The Public Prosecutor, High Court, Madras.